

STATE OF MICHIGAN
COURT OF APPEALS

THEODORE MIGDA,

Plaintiff,

UNPUBLISHED
April 10, 2001

v

No. 210779
Wayne Circuit Court
LC No. 89-904955-NZ

CLEMENCE F. MACIEJEWSKI,

Defendant,

and

SUE E. RADULOVICH,

Appellant.

Before: Markey, P.J., and McDonald and Zahra, JJ.

PER CURIAM.

Appellant, Sue Radulovich, an attorney who represented defendant in the underlying matter, appeals by right from an order finding her in contempt for obtaining a mortgage on defendant's property. We affirm.

In November 1989, after plaintiff obtained a judgment against defendant, the trial court issued an injunction prohibiting defendant or his agents from assigning or encumbering any of the assets at issue in the case. In August 1997, defendant gave Radulovich a mortgage on real property that was at issue in the lawsuit. The court had ordered that the property be sold to pay the judgment. A receiver who had been appointed in the matter subsequently moved to have Radulovich held in contempt for taking the mortgage in violation of the court's 1989 injunction. Following a hearing, the trial court found Radulovich in contempt of court and ordered that she be held in custody until she agreed to discharge the mortgage. The court also ordered Radulovich to pay sanctions for her contempt. Radulovich now challenges the court's decision holding her in contempt.

"The issuance of an order of contempt is in the sound discretion of the trial court and will be reviewed for an abuse of discretion." *People v Ahumada*, 222 Mich App 612, 617; 564 NW2d 188 (1997). The findings of the lower court regarding contempt must be affirmed if there is competent evidence to support those findings. *Cross Co v UAW Local No 155 (AFL-CIO)*, 377

Mich 202, 217-218; 139 NW2d 694 (1966). In this case, it appears that the trial court found Radulovich in civil contempt because the court did not impose a sanction as criminal punishment to vindicate the court's authority, but rather, resorted to coercion to force Radulovich to comply with the court's directive to discharge the mortgage. *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 499-500; 608 NW2d 105 (2000); *In re Contempt of Rapanos*, 143 Mich App 483, 496-497; 372 NW2d 598 (1985); see, also, MCL 600.1715; MSA 27A.1715 and MCL 600.1721; MSA 27A.1721. In order to find Radulovich in civil contempt, the court was not required to find that she willfully disobeyed an order of the court, but only that she was neglectful, engaged in misconduct, or had violated her duty to obey the court's order. *In re Contempt of United Stationers*, *supra* at 500-501; MCL 600.1701; MSA 27A.1701. The proof of contempt must be clear and unequivocal. *In re Contempt of Robertson*, 209 Mich App 433, 439; 531 NW2d 763 (1995).

The trial court was authorized under § 1701(c) and (g) to hold Radulovich in contempt for not obeying an order of the court. Here, the court found Radulovich in contempt for not obeying the court's 1989 injunction.

Radulovich first argues that the court erred in finding her in contempt when it was her client, not she, who executed the mortgage giving Radulovich an interest in the subject property. This argument is without merit. We are satisfied that the record adequately reflects Radulovich's involvement in securing the subject mortgage. Therefore, the court did not err in finding that Radulovich's receipt of a mortgage interest in the property was a proper basis for finding her in contempt. See, e.g., *In re Contempt of Rapanos*, *supra* at 490; *Michigan ex rel Wayne Prosecutor v Powers*, 97 Mich App 166, 168-169; 293 NW2d 752 (1980).

Further, regardless of whether Radulovich was personally served with the injunctive order, her actual knowledge of it may suffice to support a finding of contempt, and such actual knowledge may be inferred from the facts of the case. *Cross Co*, *supra* at 217. Here, it is readily apparent from the record that Radulovich was on notice of the 1989 injunctive order before accepting the mortgage interest from defendant.

Radulovich argues that the trial court could not properly find her in contempt because the 1989 injunction was entered pursuant to an ex parte order and, under MCR 3.310(B)(3), the order automatically expired after fourteen days. However, while providing that an injunction entered without notice expires after fourteen days, MCR 3.310(B)(3) also provides that the court may extend the injunction for a longer period if good cause is shown or the opposing party consents. The record indicates that further proceedings were held concerning the injunction in 1989. Because Radulovich has not provided this Court with the transcripts of those hearings, she has not met her burden of establishing that the injunction ceased to be valid under MCR 3.310(B)(3). *Petraszewsky v Keeth (On Remand)*, 201 Mich App 535, 540; 506 NW2d 890 (1993).

In any event, we find no record support for Radulovich's claim that the injunction ceased to be valid after 1989. On the contrary, the record indicates that the injunction was in effect continuously throughout these proceedings. Moreover, as the trial court noted, if Radulovich believed that the injunction were improperly issued initially, she was still required to abide by it until it was set aside or declared invalid. "A party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being

held in contempt and possibly being ordered to comply with the order at a later date." *Kirby v Michigan High School Athletic Ass'n*, 459 Mich 23, 40; 585 NW2d 290 (1998); see, also, *Schoensee v Bennett*, 228 Mich App 305, 317; 577 NW2d 915 (1998) ("An order entered by a court of proper jurisdiction must be obeyed even if it is clearly incorrect.") Accordingly, Radulovich was properly found in contempt for violating the injunction whether or not it complied with MCR 3.310.

Radulovich also argues that she was denied due process at the contempt hearing on January 30, 1998. Because the contempt occurred outside the court's presence, due process required that Radulovich be advised of the charges against her, granted a hearing regarding the charges, and provided with a reasonable opportunity to meet the charges by defense or explanation. *In re Contempt of Robertson, supra* at 438. She was also owed a reasonable amount of time to prepare her defense to the charges. *Id*; see, also, MCL 600.1711(2); MSA 27A.1711(2); MCR 3.606(A). A review of the record reveals that Radulovich's due process rights were not violated. Contrary to what Radulovich argues, the court did not prevent her from presenting any evidence or making any arguments in her defense.

Finally, Radulovich argues that both the receiver and plaintiff's attorney should have been sanctioned under MCR 2.114 because they misled the court concerning the applicable law when they cited the wrong court rule and filed frivolous and vexatious pleadings in connection with her contempt proceeding. Because Radulovich did not raise this argument in the trial court, it is not properly before this Court. *In re Contempt of Barnett*, 233 Mich App 188, 191; 592 NW2d 431 (1998). Regardless, the record reflects that the receiver corrected his citation and brought the error to the attention of the court before the court issued its final order holding Radulovich in contempt. Additionally, the court did not rely on the incorrect rule in reaching its decision. Further, because we conclude that the court properly found Radulovich in contempt, there is no merit to Radulovich's claim that the receiver's motions were frivolous or vexatious. See *Afshar v Zamarron*, 209 Mich App 86, 93; 530 NW2d 490 (1995).

We affirm.

/s/ Jane E. Markey
/s/ Gary R. McDonald
/s/ Brian K. Zahra